

BPS/JFV:mg

20-257-3-148

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SABRINA FLOWERS,)	
)	
Plaintiff,)	
)	
vs.)	Court No.: 08 C 449
)	
SOUTH WESTERN MOTOR SALES, INC.,)	
d/b/a TOYOTA SCION ON WESTERN AND)	
SANTANDER CONSUMER USA, INC.)	
d/b/a DRIVE FINANCIAL SERVICES)	
)	
Defendant,)	

**DEFENDANT, SOUTH WESTERN MOTOR SALES, INC.'s MOTION TO DISMISS
COUNT IV OF PLAINTIFF'S COMPLAINT**

Defendant, SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA ON WESTERN and d/b/a SCION ON WESTERN, improperly sued as SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA SCION ON WESTERN, by and through its attorneys CREMER, KOPON, SHAUGHNESSY & SPINA, LLC, Brian P. Shaughnessy, and Jaya F. Venkataramani, and for its Motion to Dismiss Count IV of Plaintiff's Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of its motion, Defendant states as follows:

1. That on January 21, 2008, Plaintiff, Sabrina Flowers, brought an action in the United States District Court for the Northern District of Illinois.
2. That the Plaintiff filed a five-count Complaint against Defendants, South Western Motor Sales, Inc., d/b/a Toyota Scion on Western and Santander Consumer USA Inc., d/b/a Drive Financial Services, alleging violations of the Illinois Consumer Fraud Act, 815 ILCS 505/2 *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. §1691 *et seq.*, and

alleging negligence arising out of a transaction involving the purchase of a used 2005 Mitsubishi Galant. A copy of Plaintiff's Complaint is attached hereto and made a part hereof as *Exhibit A*.

3. That Count IV of Plaintiff's Complaint alleges that Defendant, South Western Motor Sales, Inc., d/b/a Toyota Scion on Western violated Section 2C of the Illinois Consumer Fraud Act, 815 ILCS 505/2.
4. That Count I of Plaintiff's Complaint also alleges violations of the Illinois Consumer Fraud Act, 85 ILCS 505/2.
5. That a Complaint filed in Federal District Court, alleging a violation of the Illinois Consumer Fraud Act must also comply with Federal Rule of Civil Procedure, 9(b), which requires "all averments of fraud" to be "stated with particularity." *Vicom, Inc. v. Harbridge Merchant Services, Inc.*, 20 F.3d 771, 777 (7th Cir. 1994) (quoting Fed. R. Civ. P. 9(b)).
6. That Count IV of Plaintiff's Complaint fails to plead fraud with particularity by failing to identify "the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated." *Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 923 (7th Cir. 1992)(quoting *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 683 (7th Cir. 1992)).
7. That Count IV is duplicative of Count I of Plaintiff's Complaint in that they both allege violations of the Illinois Consumer Fraud Act and the same injury to the Plaintiff.
8. A court will find two claims duplicative if they contain the same factual allegations and the same injury. *Shaffer v. Respect, Inc.*, 1999 WL 281345, at 3 (N.D. Ill.).

9. A duplicative count may be properly dismissed. *Nagy v. Beckley*, 218 Ill.App.3d 875, 879, 578 N.E.2d 1134 (1st Dist. 1991). *See also Dahlin v. Jenner & Block, LLC*, 2001 WL 855419 (N.D. Ill.).
10. That Defendant SOUTH WESTERN MOTOR SALES, INC. seeks dismissal of Count IV of Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6).
11. That Dismissal is appropriate because Plaintiff fails to state a proper claim for relief directed to Defendant South Western Motor Sales, Inc. for alleged violations of the Illinois Consumer Fraud Act, 815 ILCS 505/2, under Fed. R. Civ. P. 9(b), and moreover Count IV is duplicative of the allegations set forth in Count I under the Illinois Consumer Fraud Act.
12. That Defendant, South Western Motor Sales, Inc. adopts and incorporates by reference its *Memorandum in Support of Its Motion to Dismiss Count IV of Plaintiff's Complaint* as though fully set forth herein.

WHEREFORE, Defendant, SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA ON WESTERN and d/b/a SCION ON WESTERN, improperly sued as SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA SCION ON WESTERN, respectfully requests this Honorable Court to dismiss Count IV of Plaintiff's Complaint and any other relief this Honorable Court deems just.

Respectfully Submitted,

/s/ Brian P. Shaughnessy
One of the Attorneys for
South Western Motor Sales, Inc.

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